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Attorneys for Defendants Matthew K. Moeller and Carelli Moeller

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF UTAH, CENTRAL DIVISION

UNITED SERVICES AUTOMOBILE
ASSOCIATION; USAA CASUALTY
INSURANCE COMPANY; and, GARRISON
PROPERTY AND CASUALTY
INSURANCE COMPANY

Plaintiffs,

v.

JAMES SEAVER and DEBORAH SEAVER,
both individually and as parents and heirs of
G.S., deceased; MATTHEW K. MOELLER
and CARELLI MOELLER, both individually
and as parents of P.M.; ROBERT
AINSWORTH and GILLIAN AINSWORTH,
both individually and as parents of J.A. and
R.A.; THE ESTATE OF R.A.; and ROBERT
AINSWORTH and/or GILLIAN
AINSWORTH as Personal Representative for
the Estate of R.A.

Defendants.

NOTICE OF REMOVAL

Case No. 2:18-cv-00720-BCW

Magistrate Judge Brooke C. Wells

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION:

Pursuant to 28 U.S.C. § 1441, Defendants Matthew K. Moeller and Carelli Moeller, by and through the undersigned counsel, hereby remove this action based on diversity of citizenship as established in 28 U.S.C. § 1332. The removing Defendants allege the following as grounds for removal:

1. This action was brought and is now pending in the District Court of the Third Judicial District, Summit County, State of Utah, Silver Summit Department, Civil No. 180500346. The action was commenced in said judicial district court on or about August 7, 2018, by filing a Complaint; and then Plaintiffs filed the First Amended Complaint and Declaratory Relief, on August 13, 2018. A copy of the First Amended Complaint and Declaratory Relief is attached hereto as Exhibit 1.

2. Defendant Matthew K. Moeller, both personally and as a parent of minor P.M., first received notice of the First Amended Complaint via service of a Summons and the First Amended Complaint on August 16, 2018. A copy of the Constable's Return and Summons is appended hereto as Exhibit 2.

3. Defendant Carelli Moeller, both personally and as a parent of minor P.M., first received notice of the First Amended Complaint via service of a Summons and the First Amended Complaint on August 16, 2018. A copy of the Constable's Return and Summons is appended hereto as Exhibit 3.

4. Defendant Robert Ainsworth, both personally and as a personal representative of the Estate of R.A., first received notice of the First Amended Complaint via service of a Summons and the First Amended Complaint on August 16, 2018. A copy of the Constable's Return and Summons for Robert Ainsworth as an individual is appended hereto Exhibit 4 and for

Robert Ainsworth as a personal representative of the Estate of R.A. is appended hereto as Exhibit 5.

5. Defendant James Seaver, both personally and as the parent and heir of G.S., first received notice of the First Amended Complaint via service of the Summons and the First Amended Complaint on August 16, 2018. A copy of the Constable's Return and Summons is appended hereto as Exhibit 6.

6. Defendant Deborah Seaver, both personally and as the parent and heir of G.S., first received notice of the First Amended Complaint via service of the Summons and the First Amended Complaint on August 16, 2018. A copy of the Constable's Return and Summons is appended hereto as Exhibit 7.

7. Plaintiff United Services Automobile Association is a reciprocal interinsurance exchange and citizen of Texas with its principal place of business in San Antonio, Texas. *See* First Amended Complaint at p. 2, Exhibit 1.

8. Plaintiff USAA Casualty Insurance Company is a corporate citizen of Texas with its principal place of business in San Antonio, Texas. *See id.* at p. 2, Exhibit 1.

9. Plaintiff Garrison Property and Casualty Insurance Company is a corporate citizen of Texas with its principal place of business in San Antonio, Texas. *See id.* at p. 2, Exhibit 1.

10. Defendant Matthew K. Moeller is an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 2, Exhibit 1.

11. Defendant Carelli Moeller is an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 2, Exhibit 1.

12. Defendants Matthew K. Moeller and Carelli Moeller are the parents of minor child P.M. P.M. is a minor, an individual citizen of the State of Utah and at all relevant times related to the above-captioned action resided in Summit County, Utah. *See id.* at pp. 2-3, Exhibit 1.

13. Defendant James Seaver is an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 2, Exhibit 1.

14. Defendant Deborah Seaver is an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 2, Exhibit 1.

15. Defendants James Seaver and Deborah Seaver are the parents and heirs of G.S. G.S. is a deceased individual who last resided in Summit County, State of Utah. *See id.* at p. 15, Exhibit 1.

16. Defendants James Seaver and Deborah Seaver, individually and as the parents and heirs of G.S., join in and consent to remove the above-captioned action to this Federal Court. *See* Defendants James Seaver's and Deborah Seaver's Joinder in and Consent to Remove, a copy of which is appended hereto as Exhibit 8.

17. Defendant Robert Ainsworth is an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 3, Exhibit 1.

18. Defendant Robert Ainsworth is the parent of J.A., and J.A. is a minor residing in Summit County, State of Utah. *See id.* at p. 3, Exhibit 1.

19. Upon information and belief, Defendant Robert Ainsworth is a personal representative of the Estate of R.A. R.A. is a deceased individual who last resided in Summit

County, State of Utah and the minor child of Robert Ainsworth and Gillian Ainsworth. *See id.* at p. 3, Exhibit 1.

20. Defendant Robert Ainsworth, individually and as a personal representative of the Estate of R.A. joins in and consents to remove the above-captioned action to this Federal Court. *See* Defendant Robert Ainsworth's Joinder in and Consent to Remove, a copy of which is appended hereto as Exhibit 9.

21. Defendant Gillian Ainsworth was at all relevant times that relate to the above-captioned action, an individual citizen of the State of Utah residing in Summit County. *See id.* at p. 3, Exhibit 1.

22. Upon information and belief, Defendant Gillian Ainsworth moved outside of the State of Utah and is now an individual citizen of the State of Georgia.

23. Upon information and belief, Plaintiffs have not yet served Defendant Gillian Ainsworth with a Summons and the First Amended Complaint filed in the above-captioned action.

24. The subject matter of the above-caption action involves interpretation and application of a number of primary and umbrella liability policies of insurance issued by Plaintiffs to named insureds and Defendants Matthew K. Moeller, Gillian M. Ainsworth and Robert J. Ainsworth in relation to the underlying suit of *James Seaver and Deborah Seaver, as parents and heirs of G.S., v Edward Shapard, Michelle Shapard, individually and as the parents of C.S. et al.*, Civil No. 180500150, filed in the Third Judicial District Court, Summit County, State of Utah ("Underlying Seaver Suit"). *See* First Amended Complaint at pp. 4, 5, 7, 9, 11 and

13 Exhibit 1; *see also* Complaint and Jury Demand filed in the Underlying *Seaver* Suit, a copy of which is appended hereto as Exhibit 10.

25. The Underlying *Seaver* Suit seeks recovery of damages for the death of James and Deborah Seaver's minor son, G.S., and alleges recovery of special damages greater than \$300,000.00. *See* Underlying *Seaver* Suit Complaint at p. 16, Exhibit 10.

26. The primary and umbrella policies of insurance at issue in the above-captioned action involve liability coverages with limit amounts ranging from \$300,000 per occurrence to \$3,000,000 per occurrence. *See* First Amended Complaint at pp. 4, 5, 7, 9, 11 and 13 Exhibit 1.

27. Based on the allegations of recovery of damages made in the Underlying *Seaver* Suit and the amount of liability coverages at issue, the amount in controversy in the above-captioned action exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs. *See* Underlying *Seaver* Suit Complaint at p. 16, Exhibit 10; *see also* First Amended Complaint at pp. 4, 5, 7, 9, 11 and 13 Exhibit 1.

28. This Court has jurisdiction of the above-entitled action, pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties, and hence this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

29. The District Court for the Third Judicial District, Summit County, State of Utah, is located within this Court's jurisdiction.

30. Contemporaneously with this filing, Defendants Matthew K. Moeller and Carelli Moeller are filing a copy of this Notice with the Clerk of the Third Judicial District Court of Summit County, State of Utah and serving that Notice upon Plaintiffs' counsel via electronic

filing notifications and upon Defendants James Seaver, Deborah Seaver and Robert Ainsworth via U.S. Mail.

WHEREFORE, removing Defendant notifies this Court, Plaintiffs, served Defendants and the District Court for the Third Judicial District, Summit County, State of Utah, that this action has been removed to the United States District Court for the District of Utah, Central Division.

DATED this 12th day of September, 2018.

CHRISTENSEN & JENSEN, P.C.

/s/ Rebecca L. Hill
Rebecca L. Hill
*Attorneys for Defendants Matthew K. Moeller and
Carelli Moeller*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2018, the foregoing **NOTICE OF REMOVAL** was filed electronically utilizing the CM/ECF system which sent notification to:

David S. Bridge

dbridge@scalleyreading.net

SCALLEY READING BATES HANSEN & RASMUSSEN

15 West South Temple, Suite 600

Salt Lake City, UT 84101

/s/ Rebecca L. Hill